

No. 9(1)82-8Lab/1620.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Eicher Tractors India Ltd. NIT, Faridabad :—

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 451 of 1978

between

THE WORKMEN AND THE MANAGEMENT OF M/S EICHER TRACTORS INDIA LIMITED, NIT FARIDABAD

Present :—

Shri S.R. Gupta for the workmen.

Shri R.C. Sharma for the management.

AWARD

By order No. ID/FD/602-77/43201, dated 27th September, 1978, the Governor of Haryana referred the following dispute between the management of M/s Eicher Tractors India Limited, NIT, Faridabad and its workmen, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the transfer of Sarvshri Ganga Parshad, S.R. Joshi, Ranbir Singh, Sat Pal, Ajeet Singh, Thakur Parshad and Rajinder Ohja from field Service Mechanic Department to Engine Assembly Department is justified and in order ? If not, to what relief they are entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties the following issues were framed on 8th March, 1979:—

- (1) Whether the dispute has been espoused by a substantial number of workmen ?
- (2) Whether the transfer of Sarvshri Ganga Parshad, S.R. Joshi, Ranbir Singh, Sat Pal, Ajeet Singh, Thakur Parshad and Rajinder Ohja from field Service Mechanic Department to Engine Assembly Department is justified and in order ? If not, to what relief they are entitled ?

The parties led their evidence and arguments were heard. I now give my finding issues-wise:—

Issue No. 1—

On this issue Shri S.R. Joshi one of the concerned workman who appeared as WW-1 stated that the workmen submitted demand notice copy Ex. W-3 through their union. In cross-examination he replied that demand notice was signed by only those persons whose signatures appear on it. No other person had signed the same. Shri Ganga Parshad also one of the concerned workman who appeared as WW-2 did not state anything on the point of espousal of the demands. WW-3 Shri Hari Parshad a workmen of the management deposed that he was President of the union, namely, Eicher Tractors Employees Union. Demand notice Ex. W-3 was issued by the union. The union supports the case of the workmen in the reference. In cross-examination he stated that he had no connect with the NLO and Shri S.R. Gupta did not hold any office in the union. He further deposed that he was President of the union from 5th March, 1980. He had not brought any record prior to 17th October, 1977 or of the even date. He stated that meeting of the executive committee was held in support of the demands but he did not remember the date of the meeting. The record was with some other office bearer of the union. At the time of raising demand he was General Secretary of the union and Ex. W-3 bears his signatures. There were 800 workmen in the factory.

Shri S.R. Gupta learned representative for the workmen argued that WW-3 had proved demand notice and support of the union. On the other hand Shri R.C. Sharma learned representative for the management contended that no record of the union was produced. Letter of authority was also not produced. The burden was upon the workmen to prove espousal.

I have gone through the file and find that demand notice Ex. W-3 was signed by the President, General Secretary and all the concerned workmen. Demand was raised by Eicher Tractor Employees Union affiliated to B.M.S. Date of demand notice was 17th October, 1977. Claim statement and rejoinder was signed by the authorised representative of the workmen. But I find that no letter of authority was available on the file. As regards contention of the authorised representative, I have given a thoughtful consideration to the argument

and find that Industrial Dispute was referred under section 10 of the Industrial Disputes Act, 1947 for adjudication. An industrial dispute was defined by section 2 (k) as under:—

“industrial dispute” means any dispute or difference between employees and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person.

The matter under reference was justification or otherwise of the transfer of the concerned workmen. To make the dispute an industrial dispute it was incumbent to prove support and espousal of the dispute by a substantial number of workmen of the establishment. On behalf of the workmen WW-3 appeared who was now President of the union. In his testimony he has stated that he was Joint Secretary at the time of giving demand notice. He had also stated that a meeting of the executive committee was held before the issue of demand notice. It is settled law that support of or espousal of co-workmen was to be seen at the time of issue of the demand. In 1965 I LLJ page 95 it was held “the fact that substantial number of workers were the members of the union was not sufficient in itself to convert the individual dispute into an industrial dispute. It must further be shown that they acted together and arrived at an understanding by a resolution or by other means and collectively by a resolution or by other means supported on the date of reference, demand or the cause of the individual workman”. In this case no record was produced to prove collective decision of the workmen. In case the executive committee was authorised in the constitution to raise demand upon the management it was necessary to produce such constitution and also proof of executive committee decision. As regards the contention of the learned representative that the management did not produce any evidence on the issue, I am of the opinion that no positive evidence could be produced by the management in such a situation. It was the union of workmen in possession of the best evidence which could throw light on the issue in controversy. A party is incapable of proof of a negative assertion because a negative does not admit of direct and simple proof of which affirmative is capable. Because the workmen have failed to produce a positive evidence on the issue in hand, therefore, an adverse inference must be drawn against them under the principles of law of evidence. Under these circumstances, I decide this issue against the workmen.

Issue No. 2—

As issue No. 1 is decided against the workmen, therefore, it will be futile to give finding on this issue.

While answering the reference, I give my award that the reference fails on issue No. 1 and the workmen are not entitled to any relief in this reference.

Dated, the 1st February, 1982.

M. C. BHARDWAJ,
Presiding Officer, Industrial
Tribunal, Haryana, Faridabad.

No. 144, dated 5th February, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer, Industrial
Tribunal, Haryana, Faridabad.

The 15th March, 1982

No. 9(1)82-8Lab/1791.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of Haryana Roadways, Rohtak:—

**BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK**

Reference No. 71 of 1979

between

**SHRI ROSHAN LAL, WORKMAN AND THE MANAGEMENT OF M/S. HARYANA
ROADWAYS, ROHTAK**

Present :—

Shri Sagar Ram Gupta for the workmen.
Shri S.C. Singal for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/RTK/3-79/2817, dated 19th March, 1979 under section 10(i)(c) of the Industrial Dispute Act for adjudication the dispute existing between Shri Roshan Lal, workman and the management of M/s Haryana Roadways, Rohtak. The term of the reference was:—

“Whether the termination of services of Shri Roshan Lal was justified and in order? If not to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance, filed their respective pleadings, issues as under were framed on the basis of their pleas:—

1. Whether the termination of the services of the workman was effected after proper domestic enquiry which was held in keeping with the principle of C.S. Rules and natural justice and the findings of the enquiry officer was not perverse.
2. As per reference.

Issue No. 1 was treated as preliminary. The parties adduced their evidence on issue No. 1. The management examined Shri Suresh Chander, Enquiry Officer and Shri Om Parkash, Clerk respondent as their witnesses and closed their case. The workman examined himself as his own witness and closed his case on issue No. 1. I heard the learned representatives of the parties and have also gone through the record. I decide issues as under:—

Issue No. 1:—

MW-1 Shri Suresh Chander, L.A. deposed that he was appointed Enquiry Officer,—*vide* Exhibit M-1. He summoned the prosecution witnesses and recorded their statements which are Exhibit M-2 to M-4 in the presence of the workman. The workman was afforded the opportunity to cross examine them and was also given the opportunity to produce his witnesses which he produced and the statement recorded in Exhibit M-5. He submitted his findings,—*vide* Exhibit M-6 to the General Manager. In his cross-examination MW-1 has stated that he informed the workman before the start of the enquiry that such and such persons will be examined as witness against him through Exhibit M-7 to M-10 but he could not produce any document which could prove that Exhibit M-7 to M-10 were delivered to the workman. There was no presenting officer on behalf of the management. The witnesses had made their statements themselves and he further stated that no leading questions were asked by him. There was no one to ask questions in cross examination of the workman witness from the side of the management. He did ask some questions as Enquiry Officer.

MW-3 deposed that a report Ex. M-11 was received against the workman. The workman was suspended,—*vide* order Ex. M-12, charge sheet Ex. M-13 was issued. After receipt of reply Ex. M-14 the legal adviser was appointed as Enquiry Officer. Final show cause notice was issued,—*vide* Ex. M-16 to which the workman replied,—*vide* Ex. M-17. The workman was given personal hearing,—*vide* Ex. M-18. Termination order was Ex. M-19.

The workman deposed that he was not supplied the copy of the list of allegations with the chargesheet Ex. M-13. He was also not supplied the list of witnesses as well as list of reliance. He has further stated that the enquiry Officer put questions to him and no management witnesses were examined in his presence. In his cross-examination the workman has stated that the statement of Joginder Singh was not recorded in his presence through his signatures appeared beneath the same. He further stated that he did not give writing any such thing that he did not want to ask any question from the witness, though his signatures are there on Exhibit M-2/A. He made a similar statement in respect of other witnesses examined on behalf of the management before the enquiry Officer. He also stated that he did not produce Shri Sat Pal in his defence as his witness but his signatures are there on Exhibit M-5/A. He has further stated that the writing on Exhibit M-5/A at mark 'X' was not in his hand but signatures are his own. He denied the suggestion that he participated in the enquiry from the beginning to the end as incorrect. He also denied the suggestion as incorrect that all the witnesses were recorded in his presence and he gave it in writing that he did not want to produce any more witness and the reply of the charge-sheet may be treated as his own statement. He admitted that the charge-sheet Exhibit M-13 was received by him and he submitted his reply to the same,—*vide* Exhibit M-14. He received show cause notice and replied the same,—*vide* Exhibit M-17.

The allegations of the workman that the enquiry was not fair and proper and violated the rules of natural justice and Civil Services Rules and the findings were perverse and also that the Enquiry Officer was labouring under misconception of law that it was not the management to substantiate the charges but the workman to prove himself innocent were not fully established by the workman. The Enquiry Officer himself was the Presenting Officer has also not been proved as the Enquiry Officer has deposed that the management witnesses themselves made their statement and he did not lead them. Though the enquiry officer has asked some questions to the witnesses of the parties just to arrive at a correct decision. There is no violation of the principle of natural justice in so doing. The findings of the Enquiry Officer are also based on the evidence produced by the parties before him and the same cannot be held to be vitiated or perverse. The workman has admitted his signatures on the enquiry proceedings from start to the

end but he has denied that the same were recorded in his presence. The proceedings have been recorded on different dates from 10th April, 1974 to 30th April, 1974 and the workman has never complained of against obtaining his signatures without his knowledge of the contents recorded therein to any of the authorities nor he has made mention of this fact in his reply to final show cause notice. The statement of the workman is not worthy of any credit and is an after-thought. The workman has admitted in his reply to the charge-sheet that the bags of fertilizer belonged to him but he had not mentioned that he did not take them in the bus and brought them down from the roof of the bus when dispute over tickets had arisen. He did not mention this fact in his statement before me also. From perusal of the enquiry file it is clear that the workman has been provided opportunity of cross-examination and he has signed thereon whether or not he has availed of that opportunity is immaterial and does not vitiate the proceedings. The learned representative of the workman has tried to prove the Enquiry Officer as biased and has cited a number of case laws where in there were circumstances which have gone to establish the bias of the Enquiry Officer but in the case in hand there are no such circumstances which go to prove this allegation against the Enquiry Officer nor any such complaint was made by the workman to any authority about the Enquiry Officer being prejudiced against him.

In view of the above discussion I am of the considered view that the enquiry is fair, proper and in accordance with the principle of natural justice and the Civil Services Rules and the same is not vitiated. The enquiry findings are not perverse. The issue is accordingly decided in favour of the management.

Issue No. 2—

The Enquiry Officer has held the workman guilty not for the charges levelled against the workman but held him guilty on the basis of the evidence led by the parties before him. The workman has also admitted the fact which has been found proved during the course of enquiry that the disputed bags belonged to him in his reply to the charge-sheet. The workman took a different and conflicting stand in his reply to the final show cause notice that he did not carry the bags on the bus and brought them down from the bus. This seems to be an after thought and no credence can be placed on this plea of the workman though it can be understood that the workman might be under the impression that he being the employee of the respondent was authorised to carry the bags free of charge and the same was in the knowledge of other officials of the management. This act of the workman cannot be said to be an act of fraud or cheating and even if it is held that the workman has committed fraud the same was of a minor nature and under misconception of his being so privileged to carry. The punishment given to the workman is shockingly disproportionate to the offence and cannot be held to be justified. The denial of back wages shall be sufficient punishment to the workman. I therefore give my award that the workman is entitled to reinstatement with continuity of service but without back wages. The reference is answered and returned accordingly.

Dated the 11th February, 1982.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

Endorsement No. 575, dated 12th February, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana Labour & Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

The 18th March, 1982.

No. 9(1)82-8Lab/1974.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s. The Sub-Divisional Officer, Bunds Sub-Division Canal Colony, Sohna, District Gurgaon.

**'IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER LABOUR COURT
HARYANA FARIDABAD..**

Reference No. 145 of 1981.

Between

**SSHRI VEER PAL WORKWEN AND THE RESPONDENT MANAGEMENT OF M/S. THE
SUB-DIVISIONAL OFFICER BUNDS SUB-DIVISION CANAL, COLONY, SOHNA DISTRICT
GURGAON**

Shri S.K. Goswami, for the workman.

Shri A.D. Kolhatkar, for the respondent, management.

AWARD

This reference No. 145 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana vide his order No. I/GGN/104-80/18454, dated 2nd April, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Veer Pal, workman and the respondent Management of M/s. The Sub-Divisional Officer, Bunds Sub-Division, Canal Colony, Sohna, District Gurgaon. The terms of the reference was :—

Whether the termination of services of Shri Veer Pal was justified and in order ? If not, to what relief is he entitled ?

After receiving this reference, notices were issued to the parties. They appeared and filed their pleadings. The case of the workman according to his demand notice and claim statement is that he was appointed as Store Munshi on 1st November, 1977 and rendered two years and nine months service and thus was a regular employee of the respondent. No charge sheet was issued to the respondent and no enquiry was conducted. No opportunity for personal hearing was given to the claimant and claimant was terminated on 29th August, 1980, without any reason. The workman has prayed for his reinstatement with full back wages and continuity of service.

According to the written statement, the case of the respondent is that the workman was employed temporarily purely on work charge basis as a stop gap arrangement on 1st December, 1977 and his appointment was not regularised as he was not taken through employment exchange. His services were legally terminated as he has been found negligent in discharging his duty as Store Munshi. The claimant was involved in a case of fraud and cheating and collected money by posing himself as Junior Engineer of P.W.D. Department and sold building plaster as cement illegally and unauthorisedly to the different persons in collaboration with the local dealer. He was caught and he admitted in writing on 8th September, 1980 that he sold the building plaster as cement. He was caught on the basis of the complaint made by the Secretary, Chandrawati Uchha Vidhyalaya Management Board, Tauru. The services were terminated because of his doubtful character and it was risky to continue him as a Store Munshi in the store at Sohna. Allowing such a dis-honest person to continue on such a responsible post was a great threat to the safety of the cement in the stores at Sohna. The claimant case was referred to the Executive Engineer, Drainage Division, Gurgaon for necessary action and advise and only on his advise, the applicant's services were terminated as he was proved unreliable and corrupt person. The applicant admitted in writing his guilt so it was not necessary to conduct the enquiry against this person. So the reference may be rejected.

On the pleadings of the parties one issue as per reference was framed :—

(1) Whether the termination of services of the workman was proper justified and in order ? If not, to what relief is he entitled ?

My findings on issues is as under :—

Issue No. 1 :

The representative of the respondent argued that the S.D.O., Bund Sub-Division, Sohna received a complaint from Shri Ravinder Kumar, Secretary, Chandrawati Uchha Vidhyalaya Management Board, Tauru in which the S.D.O. made verbal enquiry and found the workman guilty. He called the claimant in his office with other persons for the enquiry and during the course of enquiry Shri Bhajan Lal, Mistri gave in writing about this incident which is Ex. M-4 and in the same way Shri Tirlok Chand a work charge employee with the department who was also involved in the incident was also gave in writing Ex. M-5 that they have sold 327 Cement bags with Shri Veer Pal to Shri Ravinder Kumar for the school purposes. It is great mistake and they will pay Rs. 500 to the person concerned. Shri Veer Pal the claimant has also admitted vide Ex. M-3 that he had done blunder mistake by selling 327 bags of cement to Shri Ravinder Kumar for the construction of school building and received Rs. 1,750 out of this transaction. He has paid Rs. 850 and he will pay Rs. 900 up to 12th September, 1980. The complaint Ex. M-2 from Shri Ravinder Kumar, Secretary, Chandrawati Uchha Vidhyalaya Management Board, Tauru is very clear about this incident and he has come as witness before this Court and stated the whole story about the cheating the trust showing himself as Junior Engineer, P.W.D. Department. He further argued that the claimant was employed as work charge direct and not through the employment exchange. So the permission for his service used to be taken from the higher authorities, after every three months and he was not regular employee of the department. The work charge case for regular employment was taken after five year regular service as work charge and in between the work charge can be terminated at any time and because the claimant involved in cheating case on a complaint of a Trust Secretary who has come as witness in the Court as MW-2 and stated the whole story about the applicant's fraud and cheating. The applicant was working as store munshi and he showed himself as Junior Engineer and talked to the private dealer of the village and through him he managed to sell the artificial cement to the complainant and when the complainant used the cement they found it plaster then he made a complaint to the S.D.O. and on that complaint the S.D.O. Sohna made all enquiry and terminated the services of the workman rightly vide order Ex. M-1. The services of the workman was terminated after the prior approval of the Executive Engineer, Drainage Division, Gurgaon which is Ex. M-8. The workman made the complaint about the same to the S.E., Ujana Drainage Division, Circle Gurgaon on which the S.E. asked the S.D.O., to explain the position. The position was explained to the S.E. vide Ex. M-7 and the letter was also endorsed to the Xen, Gurgaon Drainage Division, Gurgaon. He further argued that the claimant has also admitted the fact in his statement as WW-1 that

he gave in writing Ex. M-3 and which bears his sig nature. He has also stated further that he has written this on the promise of the S.D.O. that he will not harm him. The plea taken by the workman cannot be taken good in the presence of the complainant's statement before this Court as MW-2. He further argued when the S.D.O. Drainage who is a gazetted officer made enquiry and found him guilty after receiving in writing the confession from the claimant, the termination need no other enquiry or chargesheet. So the termination is justified and proper. The department cannot tolerate such un-reliable and corrupt person on their roll on such an important post as Store Munshi who is incharge of thousands cement bags and other material of the Government so in view of all facts the order of termination was quite justified and proper.

The representative of the workman argued that the workman was appointed as Store Munshi on 1st November, 1977 and rendered two years 9 months complete service and became the regular employee of the respondent. The workman according to law had completed 240 days of his service as required under Section 25-B of the Industrial Disputes Act and became a regular employee of the department and when the workman was a regular and permanent employee of the respondent so it was necessary to give the charge sheet. If there was any fault of the workman, the respondent should have conducted the proper enquiry and after the proper enquiry they can terminate the service of the workman legally, without which it is illegal termination, without looking the requirement of the law for the regular and permanent employee according to the Industrial Disputes Act, the act of the respondent was illegal, unlawful and malafide and violation of principles of natural justice. The applicant was never negligent of his duties as Store Munshi and the applicant was never negligent in discharging his duties as mentioned in the termination letter. The termination was made only to adjust their person on his place. The post was never abolished. He further stated that who has terminated his service has also issued the certificate Ex. W-1 showing the work of the workman as satisfactory. The certificate was issued on 30th June, 1980 and after two months the services of the workman were terminated, shows that the services were terminated without any fault and illegally. The so called admission which is shown as M-3 was got from the workman under a threat and promise which is not genuine one and it should not be considered of his admission. So the termination of services is not justified and proper and the workman should be given the relief of continuous service and with full back wages.

After hearing the arguments of both the parties and carefully going through the file I am of the view that the applicant has failed to prove his case. He has submitted only one certificate from the S.D.O. Bund Division of his character and he has come as his own witness and stated that he was working properly well without any complaint and all has been done to involve the applicant and to remove from the service and to accommodate other persons at his place. The workman should have produced the other witnesses to prove his case but he has failed to produce any other witness to corroborate his claim on the other hand the respondent has produced the independent witness Shri Ravinder Kumar, Secretary of Chandrawati Uchha Vidhyala Board, Tauri who has stated in his statement as MW-2 that he made the complaint against the claimant and it is true complaint. There is no reason why the independent witness not be believed. It is not a case of victimization and such persons should not be tolerated in the department who cheat the public by showing himself as Junior Engineer of the department. So the termination made by the S.D.O. Bund Division, Sohna after verbal enquiry and on the confession of the claimant, gave the termination order, is justified and proper under the above circumstances. So issue is decided in favour of the respondent and against the workman.

This be read in answer to this reference.

Dated the 3rd February, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endorsement No. 452, dated 19th February, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government of Haryana, Labour and Employment Department, Chandigarh, as required under section 33-C(2) of the Industrial Disputes Act.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

No. 9(1)-82-81 ab./1795.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of Haryana Roadways, Gurgaon.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 125 of 1981

Between

SHRI GIASIRAM, WORKMAN AND THE RESPONDENT MANAGEMENT OF HARYANA
ROADWAYS, GURGAON.

Present—

Shri S.K. Goswami for the workman.

Shri K.L. Piplani for the management.

AWARD

This reference No. 125 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/GGN/108/80/13604, dated 19th March, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Giasi Ram, workman and the respondent management of Haryana Roadways Gurgaon. The terms of the reference was —

Whether the termination of service of Shri Giasi Ram was justified and in order ? If not, to what relief is he entitled ?

Notices were issued to the parties on receiving this reference. The parties appeared and filed their pleadings. The case of the workman according to the demand, notice and claim statement is that he was appointed as conductor in the year 1971 and was terminated on 22nd March, 1979. The termination was illegal, un-lawful and against the principles of natural justice. The workman received the chargesheet for embezzling of Rs. 10. It was designed to cause end to the service and no proper enquiry was made and the punishing authority has wrongly and illegally punished the applicant believing the wrong and false findings of the enquiry officer. The opportunity of personal hearing was not given to the claimant and no proper and legal show cause notice was served. So the applicant is entitled for his reinstatement with full back wages and continuity of service.

The case of the respondent is that the claimant was chargedheeted and the reply was received from the claimant. After this reply the Traffic Manager, Gurgaon was appointed as Enquiry Officer. He held regular enquiry and found the claimant guilty of embezzlement. The claimant fully participated and gave in writing that he does not want to produce any evidence in defence. On consideration of enquiry report the General Manager Haryana Roadways, Gurgaon issued the show cause notice. The claimant replied the show cause notice and after that a personal hearing was given to the claimant and services were terminated on 20th March, 1979. The order of termination after a full fledged enquiry against the workman was proper. The claimant participated throughout and given the chance to produce his defence. After complying the principles of natural justice, the services were terminated. The punishing authority fully applied his mind before passing the impugned order. The order of termination is proper and legal, so this may be rejected.

On the pleadings of the parties, the following issues were framed :—

- (1) Whether the enquiry held by the respondent Roadways was in order and not violative of the principles of natural justice ? If so, to what effect ?
- (2) Whether the termination of services of the workman is proper, justified and in order ? If no, to what relief is he entitled ?
- (3) Relief ?

My findings on issues is as under —

Issue No. 1.—The representative of the respondent argued on this issue that the claimant was appointed as Conductor in the year 1971 and made as many as 22 defaults from 7th June, 1972 to 26th October, 1977 on which the increments of the workman were stopped. He was censured and security was forfeited so many times in this period. On 6th May, 1977 the claimant was on duty on Bus No. 4267-HRA from Gurgaon to Hodel. The Flying Squad Inspectors checked the bus at Sarulpur and found 10 passengers without tickets from Palwal to Baroli and the claimant had taken the money from passengers and did not issue the tickets to the passengers. The inspector took the un-punched tickets from the claimant which are on the file of the enquiry and sent the report of the checking. On the report of the inspector the chargesheet was issued to the workman,—*vide* Ex. M-1 and M-2. The claimant replied the chargesheet,—*vide* Ex. M-3. After going through the reply the respondent appointed the Traffic Manager, Haryana Roadways, Gurgaon as Enquiry Officer,—*vide* Ex. M-4 and the Enquiry Officer sent the letter to the workman for conducting the enquiry on 23rd November, 1977. On 23rd November, 1977 the claimant came present before the enquiry officer the statement of Shri Bal Kishan Inspector Traffic was recorded in the presence of the claimant and claimant cross examined the inspector at length. The enquiry proceedings is Ex. M-5. On the same day the statement of the claimant was also recorded and the claimant gave in writing that he did not want to produce any other evidence for the enquiry which is Ex. M-7 and the statement of the claimant is Ex. M-6. After closing the evidence in the enquiry proceedings the enquiry officer gave the enquiry report,—*vide* Ex. M-8. After going through the enquiry report and other documents in the enquiry file the General Manager, Haryana Roadways, Gurgaon ordered to give the show cause notice for the termination to the conductor, and the show cause notice was issued to the claimant,—*vide* Ex. M-9. The claimant replied the show cause notice,—*vide* Ex. M-10 and the General Manager gave personal hearing to the claimant,—*vide* Ex. M-11 and after this personal hearing and going through the whole record of the claimant the General Manager made the order of termination,—*vide* Ex. M-12. The order of the punishing authority are proper and justified in accordance with the record of the claimant and enquiry proceedings before him. He further argued that the claimant has not specifically alleged in the demand notice for the claim statement about the faults in the enquiry. He has not alleged any thing against the enquiry officer or the enquiry proceedings. When he has participated in the enquiry proceedings and gave in writing that he did not want to produce any defence witness in the enquiry, it shows that he has availed the full opportunity in the enquiry. The chargesheet was given to claimant and after that he was given notice for the enquiry proceedings and the claimant came present in the enquiry and cross examined the respondent witness at length, then there is nothing wrong

in the enquiry. The claimant has alleged that no legal show cause notice was given or no personal hearing was given to the claimant is totally wrong. As shows in the enquiry file, the show cause notice was given to the workman, and the General Manager, Haryana Roadways, Gurgaon called him for the personal hearing and after giving the time to the claimant for personal hearing, the authority decided to terminate the service of the workman as he thought that such persons are not fit to be retained in the Government service anymore. So the order of termination is quite justified.

The representative of the workman argued that the workman was employed in the year 1971 and worked upto year 1979. The alleged punishment given to the workman were not communicated to him and there is no prove with the respondent that they communicated the punishment to the claimant. It is a thing of record and they are given the punishment in the record without intimation to the claimant which cannot be considered as good. He further argued that in the show cause notice the respondent has shown the back punishment which is not legal on the part of the respondent. The punishment already given to the claimant can not be taken up for the further punishment. The enquiry was not proper in the eye of law as stated by the workman in his statement as WW-1. The enquiry was conducted by the Enquiry officer but by the clerk of the enquiry officer. The enquiry proceedings are not written in the hand of the enquiry officer. They are written in the hand of the clerk of the enquiry officer and he has not signed the enquiry proceedings which is also illegal. He further argued that the claimant statement was recorded in the enquiry proceedings on the same day on which the respondent witness was recorded. The claimant was not given the time to produce further defence witness in his behalf. The respondent has failed to prove the embezzlement because they have not produced any other witness except the inspector who checked the claimant. The respondent should have produce the passengers to prove this fact which have been failed to prove at the time of enquiry proceedings. The enquiry was simply a drama to terminate the service of the claimant as it is very clear from the proceedings of the enquiry. The claimant was not given any list of witnesses before the enquiry started and he was also not given the enquiry report of the enquiry officer which is required under the law and this denial is denial of natural justice in the eye of law.

After hearing the arguments of both the parties, going through the file, I am of the view that the arguments put forward by the representative of the respondent has some force. The claimant was given all the opportunity which are required under the law in the enquiry. He was given the chargesheet and the claimant replied the chargesheet. Enquiry officer was appointed to conduct the enquiry fairly well by giving the opportunity to the claimant in his defence witnesses. The claimant gave in writing before the enquiry officer that he did not want to adduce any evidence in the enquiry, so full opportunity was given to the workman in the enquiry by the enquiry officer. The enquiry officer gave the enquiry report with a remarks that the claimant was guilty of the embezzlement of Rs. 10. The punishing authority after going through the chargesheet and reply of the workman and the enquiry proceedings and the enquiry report, gave the show cause notice to the claimant and also gave the personal hearing, so the enquiry conducted by the enquiry officer was proper and fair and this issue is decided in favour of the respondent and against the workman.

*Issue No. 2.—*After deciding issue No. 1 in favour of the respondent whether the enquiry officer has found the workman guilty of embezzlement the General Manager, Haryana, Roadways, Gurgaon has rightly ordered for the termination of service of the workman in accordance with the findings of the enquiry officer with other documents like chargesheet reply and the enquiry proceedings and the show cause notice and reply of show cause notice and personal hearing. There is nothing wrong in the order of punishing authority. The claimant had previously been punished 22 times for likewise offences. The previous record of the workman is so shaky that the punishing authority was right in passing the impugned order. The services of the claimant were terminated on 20th March, 1979 and the workman gave this demand notice on 24th October, 1980 after a lapse of 19 months which shows that the workman know this fact very well that there is nothing in his case and after a long time he made this demand notice. The claimant has not explained the delay in his statement or any where by some documentary evidence or oral evidence, to show that he was restrained to give the demand notice earlier. In these circumstances, this issue is decided in favour of the respondent and against the workman. The workman is not entitled for any relief.

No order as to costs. This be read in answer to this reference.

HARI SINGH KAUSHIK,

Dated the 4th February, 1982.

Presiding Officer,

Labour Court, Haryana, Faridabad.

Endorsement No. 453, dated the 19th February, 1982

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana, Faridabad.